

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

KIT FANKHAUSER

§

§

V.

§

CASE NO. 4:10cv274

§

(Judge Schneider/Judge Mazzant)

FANNIE MAE, a/k/a Federal National  
Mortgage Association, ET AL.

§

§

## **MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On March 30, 2011, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint (Dkt. #16) should be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

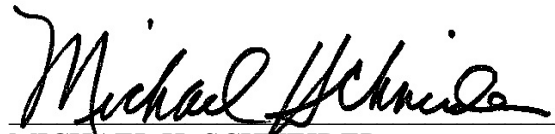
It is, therefore, **ORDERED** that Defendants' Motion to Dismiss (Dkt. #16) is **GRANTED** in part and **DENIED** in part.

The following causes of action are dismissed: (1) breach of contract based upon an oral contract; (2) anticipatory breach of contract; (3) fraud claims based on oral representation occurring after the execution of the loan documents; (4) negligent misrepresentation; and (5) gross negligence.

It is further **ORDERED** that Plaintiff shall not be given another opportunity to amend her pleadings.

**IT IS SO ORDERED.**

**SIGNED this 29th day of April, 2011.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE